

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

DAVID CLAUS STELLING,)	
)	
Plaintiff)	
v.)	Civil No. 99-0200-B
)	
KENNEBEC COUNTY CORRECTIONAL)	
FACILITY, et al.,)	
)	
Defendants)	

RECOMMENDED DECISION

Defendants Department of Corrections and State Jail Inspector move to dismiss Plaintiff's Complaint for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6). Plaintiff has expressly consented to dismissal of Defendant Department of Corrections.¹ Plaintiff objects to dismissal of Defendant State Jail Inspector.

Defendant asserts that Plaintiff's Amended Complaint has set forth no allegations of acts or omissions actually attributable to Defendant, or for which Defendant is responsible as a matter of state law. The Amended Complaint alleges

¹ Plaintiff indicated in his response to the pending Motions to Dismiss that he wishes to voluntarily dismiss Defendants Sleek, Doe 1 and 2, Cicone, Regina and Medical Department. He also consents to dismissal of Defendant City of Augusta, which Defendant is a party to a separate Motion to Dismiss. In addition, Plaintiff has added new names to the list of Defendants he wishes to remain in the action. These new Defendants were not party to the original Complaint, and have not been added by amendment to the Complaint in accordance with Federal Rule of Civil Procedure 15. Plaintiff's reference to them in this pleading is therefore of no effect.

inadequate medical care while Plaintiff was incarcerated at the Kennebec County Jail. Specifically, Plaintiff asserts that he was told by both a physician's assistant and a nurse that they were not permitted to adequately medicate him, despite his pain. The Amended Complaint does not allege where that instruction originated. The only reference to the State Jail Inspector is an indication that Plaintiff "spoke w/ [sic] . . . Lorraine Spiller, whose letter of 8/12 I rec'd [sic] Sept. I, 1999." Attached to the Amended Complaint is a two-page letter from Lorraine Spiller, who is identified as a physician's assistant with the Department of Corrections, Division of Inspections, Quality Assurance and Professional Practices. In sum, these references to the State Jail Inspector do not amount to a cause of action under section 1983. There is no *respondeat superior* liability under section 1983. *Monell v. Department of Soc. Serv.*, 436 U.S. 658, 691 (1978). "Liability in damages can only be imposed upon officials who were involved personally in the deprivation of constitutional rights." *Ramirez v. Colon*, 21 F. Supp. 2d 96, 98 (D.P.R. 1997) (citing *Pinto v. Nettleship*, 737 F.2d 130, 132 (1st Cir. 1984)). In the case of inadequate medical care, for example, "[t]he requisite personal involvement of a prison official may be established by showing that the official knew of the prisoner's need for medical care yet failed to provide the same." *Id.* Plaintiff's allegation that he "spoke to Lorraine Spiller" simply does not personally implicate the State Jail Inspector.

Conclusion

For the foregoing reasons, I hereby recommend Defendants Department of Corrections and State Jail Inspector's Motion to Dismiss (docket no. 6) be GRANTED.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) (1988) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

Eugene W. Beaulieu
United States Magistrate Judge

Dated on: December 10, 1999